

AO 120 (Rev. 2/99)

TO: Mail Stop 8 Director of the U.S. Patent & Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been
 filed in the U.S. District Court Northern District California on the ☒ Patents or ☐ Trademarks:

DOCKET NO. CV 11-02405 JCS	DATE FILED 5/17/2011	U.S. DISTRICT COURT 450 Golden Gate Avenue, 16 th Floor, San Francisco CA 94102
PLAINTIFF IRIDEX CORP		DEFENDANT ALCON, INC., ET AL.
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 6,800,076		***See Attach Complaint***
2 7,537,593		
3		
4		
5		

In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY	
	<input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1		
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK Richard W. Wieking	(BY) DEPUTY CLERK Gina Agustine-Rivas	DATE May 19, 2011
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Copy 1—Upon initiation of action, mail this copy to Commissioner Copy 3—Upon termination of action, mail this copy to Commissioner
 Copy 2—Upon filing document adding patent(s), mail this copy to Commissioner Copy 4—Case file copy

1 infringe the '593 patent by its manufacture, use, sale, offer for sale and/or importation of products
2 within this judicial district and elsewhere in the United States that infringe one or more claims of
3 the '593 patent. Examples of infringing products include 20-gauge, 23-gauge and 25-gauge soft
4 tip cannulas with colored silicone ends sold under one or more the product names Accurus®
5 Surgical System 23-Gauge Soft-Tip Cannula, Grieshaber® DSP and/or Micro-Incision Vitrectomy
6 Surgery ("MIVS") tips, product numbers including but not limited to 8065149525, 8065149523
7 and 8065149520, sold alone or as part of a Grieshaber® backflush device or as part of a package of
8 instruments sold to work with the Constellation® Vision System. The Alcon colored soft tip
9 cannulas are especially made or adapted for use in the methods claimed in the '593 patent and are
10 not staple articles suitable for substantial noninfringing use. Aware of this and with knowledge of
11 the '593 patent, Alcon instructs and Alcon encourages the use of Alcon colored soft tip cannulas
12 in ophthalmic surgical procedures, including vitrectomy surgery, as "active and passive aspirators"
13 and highlights the "green tip color" as improving visualization. On information and belief, Alcon
14 sells the Alcon colored soft tip cannulas individually or as part of a system to doctors who
15 purchase these Alcon products and use them in ophthalmic surgeries, including vitrectomy
16 surgeries, upon Alcon's instruction and encouragement. On information and belief, when Alcon
17 so instructs and encourages, it intends that the doctors will use the Alcon colored soft tip cannulas,
18 the Grieshaber® backflush device and the Constellation® Vision System in ways that infringe the
19 '593 patent and the doctors in fact do use these Alcon products in ways that infringe the '593
20 patent. Alcon's actions infringe one or more of the '593 patent claims, including but not limited to
21 claims 13 and 21.

22 29. On information and belief, Alcon was aware of the '593 patent prior to the filing of
23 this Complaint but recklessly continued to make, use, sell, offer for sale and/or import products,
24 and instruct and encourage doctors to use these products in ophthalmic surgeries, knowing that
25 such actions constitute a high likelihood of infringement of the '593 patent. Alcon acted and
26 continues to act despite an objectively high likelihood that its actions constituted and continue to
27 constitute infringement of a valid and enforceable patent; this objectively-defined risk was so
28 obvious that it should have been known to Alcon; and in fact Alcon acted and continued to act



1 knowing of this objectively-defined risk. Alcon's infringement of the '593 patent is thus willful.

2 30. Alcon's infringement of the '593 patent has caused and, unless enjoined, will
3 continue to cause, irreparable harm to Iridex. Iridex has no adequate remedy at law and is entitled
4 to a permanent injunction against further infringement.

5 31. Iridex has suffered and will continue to suffer damage to its business by reason of
6 Alcon's acts of infringement of the '593 patent as alleged herein and Iridex is entitled to recover
7 from Alcon the damages sustained as a result of Alcon's acts pursuant to 35 U.S.C. § 284.

8 32. Iridex is informed and believes, and on that basis alleges, that Alcon's actions make
9 this an exceptional case within the meaning of 35 U.S.C. § 285, which entitles Iridex to an award
10 of attorneys' fees.

11 **THIRD CLAIM FOR RELIEF**

12 (Declaratory Judgment That Iridex Is The Sole Owner of the '076 and '593 Patents)

13 33. Iridex incorporates by reference paragraphs 1 through 20 above.

14 34. To the extent Alcon contests Iridex's ownership of the '076 and '593 patents, by
15 asserting that Mr. Hallen is a co-inventor of either or both of the '076 and '593 patents, Iridex
16 requests a declaration of its rights as the sole owner of the '076 and '593 patents.

17 35. Mr. Hallen was hired by RetinaLabs as Vice President, Research and Development
18 of RetinaLabs, to use his inventive faculties to contribute to the development of RetinaLabs
19 technology. For example, Mr. Hallen was hired for the purpose of further developing ophthalmic
20 devices. As a result of Mr. Hallen's employment, position and responsibilities, he had an
21 obligation to assign all rights in any invention developed in the course of his employment to
22 RetinaLabs. Indeed, Mr. Hallen demonstrated that he understood this obligation by assigning to
23 RetinaLabs all rights in the inventions he participated in developing during his employment, many
24 of which resulted in patents in which Mr. Hallen assigned all of his rights to RetinaLabs. Had Mr.
25 Hallen's contributions to the inventions of either the '076 and /or '593 patents risen to the level of
26 inventorship, his rights would have been similarly assigned to RetinaLabs and would now be
27 owned by Iridex.

28 36. To the extent Alcon contests Iridex's ownership of the '076 and '593 patents,

1 Alcon has created a case or controversy regarding ownership of the '076 and '593 patents and
2 Iridex requests a declaration of Iridex's rights as the sole owner of the '076 and '593 patents to
3 resolve this dispute.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Iridex Corp. prays for the following relief:

- 6 1. That judgment be entered in favor of Iridex Corp. with a finding that Alcon, Inc.,
7 Alcon Laboratories, Inc., and Alcon Research Ltd., have infringed and are infringing claims of
8 United States Patent Nos. 6,800,076 and 7,537,593 in violation of 35 U.S.C. §271;
- 9 2. That judgment be entered in favor of Iridex Corp. with a finding that Iridex Corp. is
10 the sole and exclusive owner of United States Patent Nos. 6,800,076 and 7,537,593;
- 11 3. That Iridex Corp. be granted an accounting of all damages sustained as a result of
12 the infringement of Alcon, Inc., Alcon Laboratories, Inc., and Alcon Research Ltd., of United
13 States Patent Nos. 6,800,076 and 7,537,593 as herein alleged;
- 14 4. That Iridex Corp. be awarded actual damages with prejudgment interest according
15 to proof and enhanced damages pursuant to 35 U.S.C. §284;
- 16 5. That a permanent injunction be issued pursuant to 35 U.S.C. §283 enjoining Alcon,
17 Inc., Alcon Laboratories, Inc., and Alcon Research Ltd., their officers, agents, servants,
18 employees, and all other persons acting in concert or participation with them from further
19 infringement of United States Patent Nos. 6,800,076 and 7,537,593;
- 20 6. That this case be decreed an "exceptional case" within the meaning of 35 U.S.C.
21 §285, and that reasonable attorneys' fees, expenses, and costs be awarded to Iridex Corp.; and
- 22 7. That Iridex be awarded such further relief as the Court deems just and proper.

23 ///

24 ///

1 **DEMAND FOR JURY TRIAL**

2 Iridex Corp. hereby demands a jury trial as to all issues triable to a jury.

3
4 DATED: May 17, 2011

Respectfully submitted,

5 KILPATRICK TOWNSEND & STOCKTON LLP

6
7 By: _____

A. JAMES ISBESTER

8 ANNE M. ROGASKI

9 *Attorneys for Plaintiff, IRIDEX CORP.*

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2011 MAY 17 A 11:35

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Request for Default

Date Submitted

for Review

☐

Enter

☐

Decline

Supervisor's Initials

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

JCS

IRIDEX CORP., a Delaware corporation

Plaintiff,

v.

ALCON, INC., ALCON LABORATORIES,
INC., ALCON RESEARCH LTD. (all
Delaware corporations) and DOES 1-5,
inclusive,

Defendants.

CV 11-02405

CIVIL ACTION NO.

**COMPLAINT FOR PATENT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

I hereby certify that the annexed
instrument is a true and correct copy
of the original on file in my office.

ATTEST:

RICHARD W. WIEKING
Clerk, U.S. District Court
Northern District of California

By

GINA AGUIRRE
Deputy Clerk

Date

5/20/11

Plaintiff Iridex Corp. ("Iridex"), for its complaint against Defendants Alcon, Inc., Alcon
Laboratories, Inc., and Alcon Research Ltd. (collectively, "Alcon"), alleges as follows:

NATURE OF THE ACTION

1. This is an action arising under the patent laws of the United States based on
infringement by Alcon of claims in two patents owned by Iridex. Iridex seeks damages for
Alcon's infringement, enhancement of damages due to Alcon's willful infringement and a
permanent injunction restraining Alcon from further infringement.

1 **PARTIES**

2 2. Iridex is a corporation organized and existing under the laws of Delaware with its
3 principal place of business located at 1212 Terra Bella, Mountain View, CA 94043. Founded in
4 1989, Iridex is a worldwide leader in developing, manufacturing and marketing innovative and
5 versatile light-based medical systems and delivery devices.

6 3. On information and belief, Defendant Alcon, Inc., is a corporation organized and
7 existing under the laws of the state of Delaware, with a principal place of business at 6201 S.
8 Freeway, Fort Worth, Texas 76134. On further information and belief, Alcon, Inc. is the parent
9 corporation of Alcon Laboratories (the selling, marketing and distribution arm of Alcon, Inc.) and
10 Alcon Research, Ltd. (the United States manufacturing, research and development arm of Alcon,
11 Inc.).

12 4. On information and belief, Defendant Alcon Laboratories, Inc., is a corporation
13 organized and existing under the laws of the state of Delaware, with a principal place of business
14 at 6201 S. Freeway, Fort Worth, Texas 76134.

15 5. On information and belief, Defendant Alcon Research Ltd., is a corporation
16 organized and existing under the laws of the state of Delaware, with a principal place of business
17 at 9965 Buffalo Speedway, Houston, Texas 77054 and a manufacturing facility at 15800 Alton
18 Parkway, Irvine, California 92618.

19 6. Iridex is ignorant of the true names and capacities of Defendants sued herein as
20 Does 1 through 5, inclusive, and therefore sues said Defendants by such fictitious names. Iridex
21 will amend this Complaint, if necessary, to allege their true names and capacities when
22 ascertained.

23 **JURISDICTION**

24 7. This is an action for patent infringement arising under the patent laws of the United
25 States, Title 35 of the United States Code. This Court has subject matter jurisdiction pursuant to
26 28 U.S.C. §§1331 and 1338(a). This Court has personal jurisdiction over the Alcon defendants
27 because, on information and belief, each has purposely availed itself of the privilege of conducting
28 activities within this State and District, at a minimum, through sales of the accused products and

1 other products for use in ophthalmic procedures in this State and District and by marketing the
2 accused products and other products (including providing samples) at trade shows and/or scientific
3 exhibitions such as the annual meetings of the Retina Society and the American Academy of
4 Ophthalmology in this State and District.

5 **VENUE**

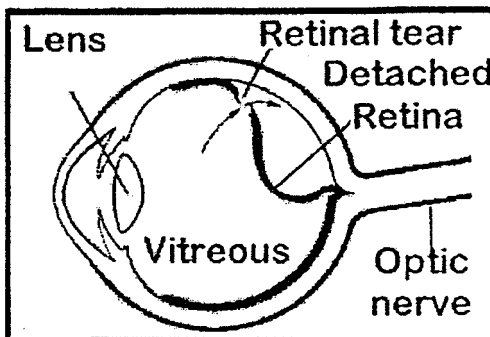
6 8. Venue is proper in this judicial district pursuant to 28 U.S.C. §§1391 and 1400(b)
7 as the Alcon defendants have done business in this judicial district and have committed and
8 continue to commit acts of patent infringement in this judicial district.

9 **INTRADISTRICT ASSIGNMENT**

10 9. Because this is an Intellectual Property Case, it may be assigned on a district-wide
11 basis pursuant to Civil Local Rule 3-2(c).

12 **BACKGROUND**

13 10. Retinal detachment is a serious eye condition requiring early treatment to avoid
14 impairment or loss of vision. It can occur due to injury to the eye or as a result of cataract surgery.
15 The retina is a fine layer of nerve cells that covers the inside back portion of the eye. If it thins,
16 tears or holes in the retina can occur, which may lead to retinal detachment (see figure, below).



23 Various procedures have been developed to treat retinal detachment, including laser
24 photocoagulation to seal the tears as well as more complicated surgical procedures in which the
25 detached portion of the retina is pressed against the back wall of the eye. In connection with the
26 latter procedure, the tip of a cannula (tube) can be used to press the detached portion of the retina
27 against the back wall of the eye and the cannula can also be used to remove fluids or introduce air
28 or gas to the eye. The tip of the cannula must be soft to avoid damaging the eye. A disadvantage

of cannulas in the past was the tip of the cannulas was transparent, making it difficult to visualize the tip in the eye during surgery, critical for most effective use.

11. More serious ophthalmic surgical procedures include vitreoretinal procedures, in which the vitreous body is cut away from the retina and removed from the eye. The vitreous cavity may then be filled with air or gas to push the retina back against the wall of the eye, after which fluid fills the vitreous cavity. During vitreoretinal procedures, a cannula can be used to push the detached portion of the retina against the back wall of the eye as well as to fill the vitreous cavity with air or gas and remove fluids from the eye.

12. The patents asserted in this case, United States Patent Nos. 6,800,076 and 7,537,593, are directed to cannulas with soft tips (and their use in ophthalmic surgery) that are at least partially colored to allow for better visibility in the eye, resulting in safer and easier manipulation around the delicate eye tissue during ophthalmic surgery.

13. Iridex manufactures and sells GreenTip™ Soft Tip Cannulas, covered by and marked with United States Patent Nos. 6,800,076 and 7,537,593, to doctors for use in ophthalmic surgery. RetinaLabs began selling its GreenTip™ Soft Tip Cannulas in or about January 2007. In or about January 2010, Iridex began distributing RetinaLabs' GreenTip™ Soft Tip Cannulas. RetinaLabs was acquired by Iridex in or about April of 2010, at which time Iridex began selling the GreenTip™ Soft Tip Cannulas as an Iridex product.

THE PATENTS

14. Iridex is the owner and assignee of United States Patent No. 6,800,076 ("the '076 patent") entitled, "Soft Tip Cannula and Methods For Use Thereof." A true and correct copy of the '076 patent is attached hereto as Exhibit A. The '076 patent was duly and legally issued by the United States Patent and Trademark Office on October 5, 2004, to Mark Humayun as the inventor and Retinalabs, Inc., as the assignee. RetinaLabs, Inc., has since assigned all rights, title and interest in and to the '076 patent to Iridex. Iridex continues to hold all rights, title and interest in and to the '076 patent.

15. Iridex is the owner and assignee of United States Patent No. 7,537,593 ("the '593 patent"), entitled "Soft Tip Cannula and Methods for Use Thereof." A true and correct copy of the

1 '593 patent is attached hereto as Exhibit B. The '593 patent was duly and legally issued by the
2 United States Patent and Trademark Office on May 26, 2009, to Mark Humayun as the inventor
3 and Retinalabs.com, Inc., as the assignee (whose name later was clarified to be RetinaLabs, Inc.).
4 RetinaLabs, Inc., has since assigned all rights, title and interest in and to the '593 patent to Iridex.
5 Iridex continues to hold all rights, title and interest in and to the '593 patent.

6 THE ALCON PRODUCTS

7 16. On information and belief, the Alcon defendants make and sell in the United States
8 20-gauge, 23-gauge and 25-gauge soft tip cannulas with green (and other colors) silicone ends
9 (collectively, "Alcon colored soft tip cannulas") under one or more the product names Accurus®
10 Surgical System 23-Gauge Soft-Tip Cannula, Grieshaber® DSP and/or Micro-Incision Vitrectomy
11 Surgery ("MIVS") tips, product numbers including but not limited to 8065149525, 8065149523
12 and 8065149520. (See, e.g., <http://www.alconretina.com/products/mivs/25gauge.asp> and
13 <http://www.alconretina.com/products/grieshaber/grieshaberDSPTips.asp>.) The Alcon colored soft
14 tip cannulas are sold alone or in combination with a Grieshaber® backflush device, marketed for
15 use as "active and passive aspirators," or as part of a package of instruments sold to work with the
16 Constellation® Vision System. (<http://www.alconretina.com/products/mivs/25gauge.asp>.) A key
17 feature by which Alcon markets the Alcon colored soft tip cannulas is the "green tip color –
18 improves tip visualization under air." (<http://www.alconretina.com/products/mivs/25gauge.asp>.)
19 The Grieshaber® DSP Tips are marketed for use as vitreoretinal instruments.
20 (<http://www.alconretina.com/products/grieshaber/grieshaberDSPTips.asp>.) These instruments are
21 marketed for use in ophthalmic surgery, including vitrectomy surgery. On information and belief,
22 the Constellation® Vision System is programmed to instruct the particular use of the Alcon
23 colored soft tip cannulas. Alcon's colored soft tip cannulas are sold in competition with Iridex's
24 GreenTip™ Soft Tip Cannulas.

25 ALCON'S WILLFUL INFRINGEMENT

26 17. Alcon has engaged and continues to engage in a pattern of conduct demonstrating:
27 Alcon's awareness of the '076 and '593 patents; the objectively high likelihood that Alcon's
28 actions constituted and continue to constitute infringement of claims of the '076 and '593 patents



1 and that the patents are valid and enforceable; that this objectively-defined risk was so obvious
2 that Alcon should have known it; and that Alcon in fact knew of this objectively-defined risk.

3 18. On information and belief, Alcon has been aware of the '076 patent since at least
4 November 2006, when Iridex's predecessor-in-interest, RetinaLabs, Inc., first made Alcon aware
5 of the '076 patent and its relevance to the Alcon soft-tip products, and of the '593 patent since in
6 or about May 2009, when the '593 patent issued, or at least by August 2010 when Iridex identified
7 the '593 patent to Alcon. After obtaining the rights, title and interest to the '076 and '593 patents,
8 Iridex continued to discuss with Alcon the coverage of the Alcon soft-tip products by the Iridex
9 patents. Demonstrating Alcon's awareness of the objectively high likelihood that its actions
10 constituted infringement of the '076 and '593 patents, Alcon offered no response that its products
11 were not covered by Iridex's patents, yet chose to continue to sell the products at issue, in
12 violation of the '076 and '593 patents. Alcon has not ceased selling the infringing products since
13 learning of the '076 and '593 patents, in willful disregard for Iridex's patent rights.

14 19. On information and belief, Paul Hallen, a current Alcon employee, disputes
15 Iridex's ownership of the '076 and '593 patents based on rights to the Iridex patents he allegedly
16 obtained when he was a former RetinaLabs employee. While employed by RetinaLabs as the Vice
17 President of Research and Development, Mr. Hallen owed a duty to assign to RetinaLabs any
18 inventions he discovered during his employ. Mr. Hallen understood this duty, as demonstrated by
19 his assignment to RetinaLabs of his rights to those patents that did result from Mr. Hallen's work
20 while employed by RetinaLabs. On information and belief, Mr. Hallen, having left RetinaLabs for
21 Alcon, now claims to be a co-inventor of the Iridex '076 and '593 patents. Contrary to his duty to
22 assign any inventions he made while employed by RetinaLabs to RetinaLabs, on further
23 information and belief, Mr. Hallen claims his "rights" in the Iridex patents were not assigned to
24 Iridex. Mr. Hallen is not a named inventor of the '076 or '593 patents, Iridex is aware of no
25 corroboration that Mr. Hallen is an inventor of any claim of the '076 and '593 patents and there is
26 no public record of any assignment by Mr. Hallen to another.

27 20. In light of Mr. Hallen's duty to assign inventions to RetinaLabs, even if there were
28 any corroboration showing Mr. Hallen to be an inventor, any rights to the inventions of the '076



1 and '593 patents Mr. Hallen might have had as an inventor were owed to RetinaLabs, who
2 employed Mr. Hallen at the time. Moreover, Iridex's ability to fully investigate Mr. Hallen's
3 assertions of inventorship has been severely hindered as, on information and belief, upon leaving
4 RetinaLabs' employ, Mr. Hallen reformatted the hard drive of the RetinaLabs laptop computer
5 assigned to Mr. Hallen for use during his employ, thereby erasing RetinaLabs documents, and
6 failed to return physical files of RetinaLabs (now Iridex) pertaining to Iridex's patents at issue in
7 this lawsuit. Any dispute of Iridex's ownership of the '076 and '593 patents under these facts,
8 without any contemporaneous corroboration, is unreasonable and evidences willful infringement.

9 **FIRST CLAIM FOR RELIEF**

10 (Infringement of U.S. Patent No. 6,800,076)

11 21. Iridex incorporates by reference paragraphs 1 through 20 above.

12 22. On information and belief, Alcon directly, indirectly, contributorily and/or by
13 inducement, literally and/or under the doctrine of equivalents, has infringed and continues to
14 infringe the '076 patent by its manufacture, use, sale, offer for sale and/or importation of products
15 within this judicial district and elsewhere in the United States that infringe one or more claims of
16 the '076 patent. Examples of infringing products include 20-gauge, 23-gauge and 25-gauge soft
17 tip cannulas with colored silicone ends sold under one or more the product names Accurus®
18 Surgical System 23-Gauge Soft-Tip Cannula, Grieshaber® DSP and/or Micro-Incision Vitrectomy
19 Surgery ("MIVS") tips, product numbers including but not limited to 8065149525, 8065149523
20 and 8065149520, sold alone or as part of a Grieshaber® backflush device or as part of a package of
21 instruments sold to work with the Constellation® Vision System. The Alcon colored soft tip
22 cannulas are especially made or adapted for use in the methods claimed in the '076 patent and are
23 not staple articles suitable for substantial noninfringing use. Aware of this and with knowledge of
24 the '076 patent, Alcon instructs and encourages the use of Alcon colored soft tip cannulas in
25 ophthalmic surgical procedures, including vitrectomy surgery, as "active and passive aspirators"
26 and highlights the "green tip color" as improving visualization. On information and belief, Alcon
27 sells the Alcon colored soft tip cannulas individually or as part of a system to doctors who
28 purchase these Alcon products and use them in ophthalmic surgeries, including vitrectomy

1 surgeries, upon Alcon's instruction and encouragement. On information and belief, when Alcon
2 so instructs and encourages, it intends that the doctors will use the Alcon colored soft tip cannulas,
3 the Grieshaber® backflush device and the Constellation® Vision System in ways that infringe the
4 '076 patent and the doctors in fact do use the Alcon products in ways that infringe the '076 patent.
5 Alcon's actions infringe one or more of the '076 patent claims, including but not limited to claims
6 1 and 17.

7 23. On information and belief, Alcon was aware of the '076 patent prior to the filing of
8 this Complaint but recklessly continued to make, use, sell, offer for sale and/or import products,
9 and instruct and encourage doctors to use these products in ophthalmic surgeries, knowing that
10 such actions constitute a high likelihood of infringement of the '076 patent. Alcon acted and
11 continues to act despite an objectively high likelihood that its actions constituted and continue to
12 constitute infringement of a valid and enforceable patent; this objectively-defined risk was so
13 obvious that it should have been known to Alcon; and in fact Alcon acted and continued to act
14 knowing of this objectively-defined risk. Alcon's infringement of the '076 patent is thus willful.

15 24. Alcon's infringement of the '076 patent has caused and, unless enjoined, will
16 continue to cause, irreparable harm to Iridex. Iridex has no adequate remedy at law and is entitled
17 to a permanent injunction against further infringement.

18 25. Iridex has suffered and will continue to suffer damage to its business by reason of
19 Alcon's acts of infringement of the '076 patent as alleged herein and Iridex is entitled to recover
20 from Alcon the damages sustained as a result of Alcon's acts pursuant to 35 U.S.C. § 284.

21 26. Iridex is informed and believes, and on that basis alleges, that Alcon's actions make
22 this an exceptional case within the meaning of 35 U.S.C. § 285, which entitles Iridex to an award
23 of attorneys' fees.

24 **SECOND CLAIM FOR RELIEF**

25 (Infringement of U.S. Patent No. 7,537,593)

26 27. Iridex incorporates by reference paragraphs 1 through 20 above.

27 28. On information and belief, Alcon directly, indirectly, contributorily and/or by
28 inducement, literally and/or under the doctrine of equivalents, has infringed and continues to